it is remembered that not only was the nearby consignment of paper undamaged but not one single claim has been made in respect of damage to other cargo which was stowed in the same area and included such diverse items as bicycle parts, silk and cotton, all of which, if immersed in salt water, would be rapidly ruined?

Although parts of Mr. Peterson's evidence — unfortunately recorded *de bene esse* — were not very convincing, it is difficult to see what further evidence could have been called to prove that the defendant Company was not negligent and it only remains to be considered whether they may be deemed to have discharged their onus of proof or whether their liability is in effect, absolute because they cannot explain how the damage was occasioned. Part of the judgment of Atkinson J. in *Phillips case*[4], *supra* (at page 61) is in point:—

"It is not necessary for the defendants to establish exactly why and how the damage occurred, provided they can disprove negligence; but, of course, it is not easy to do that unless they can establish some reasonably possible alternative explanation. If the damage is entirely unexplained, it is difficult to see how the onus can be discharged."

The alternative explanation offered by the defendants to which I have referred above, is that the wire was loaded in Antwerp into large steel lighters, some of which were very heavily loaded. According to the Chief Officer indeed, certain of these lighters had only a foot, to a foot and a half, free board. He added that it was quite possible for cargo in these heavily loaded lighters to have come in contact with spray and that he had seen lighters being cleaned out with water which was half salt and half fresh. This evidence was uncontradicted — the plaintiffs having made no attempt to prove the condition of the cargo when delivered to the ship — and it is thus quite possible that the wire *was* damaged by contact with salt water either within the lighters or through spray from outside, when being carried by them to the *Magdala*. Once this possibility is accepted the rusting of the wire in the humid air as the vessel neared the tropics, would be a natural consequence.

In my opinion considering all the probabilities of the matter, the alternative put forward by the defendants is a far more likely solution to the problem as to how the wire came to be damaged than the suggestion that it came into contact with salt water whilst in the *Magdala's* hold, which is said to be completely watertight and in which, it must be remembered, no other article whatsoever was damaged. I hold therefore that the defendants have established a reasonably possible alternative explanation — indeed I would go further and say a more probable one, than the plaintiffs' contention that they have been guilty of negligence and as I have already found that as regards this part of the case the doctrine of estoppel does not apply, it must follow that their defence to the claim is a good one.

I have not overlooked the letter at page 27 of Exhibit AB — which should, of course, have been written "without prejudice" — but I do not consider that in it the defendants are making an implied admission of liability for the damage done to the cargo. No doubt the defendants (like anyone else would be) were anxious to avoid the expense and uncertainty of litigation — particularly when it is remembered that their most important witnesses were ship's officers, literally sailing the seven seas, whose presence in Singapore would be most difficult to arrange. Mr. Lommer clearly thought that a settlement on a 50% basis might prove advantageous to his Company and he may very well have been right. But I read no admission of negligence into this letter.

There will be judgment for the defendants and I shall hear argument as to costs.

Judgment for the defendants.

Solicitors — for the plaintiffs: *Drew & Napier;* for the 1st defendants: *Allen & Gledhill;* and for the 2nd defendants: *Donaldson & Burkinshaw.*

TAN YOOK SUAN v. REGINA.

[A. Cr. J. (Murray Aynsley, C.J.) May 5, 1954]

[Singapore — Magistrate's Appeal No. 6 of 1954]

Criminal Law — Evidence — Accomplice — Warning — Necessity for — Rule of law.

The appellant, a Housing Investigating Officer of the Singapore Improvement Trust, was charged with corruptly accepting the sum of $1,000 as an inducement to do an act in relation to his principal's affairs, an offence punishable under section 3 (a) of the Prevention of Corruption Ordinance 1937.

The case for the prosecution was briefly as follows:— Sometime in April 1953 Phua Hoon Sin (P.W. 8), Kwang Boon Pin (P.W. 10) and See Boon Tow (P.W. 11) entered into a partnership to carry on a hairdressing business at No. 10 Albert Street. See Boon Tow was the tenant of No. 10 Albert Street and carried on a textile business on the premises. Permission to change the nature of the business and to make structural alterations to 10 Albert Street had to be obtained from the Singapore Improvement Trust, the owners of the premises.

Phua Hoon Sin and Kwang Boon Pin enlisted the help of Seah Chin Kwang (D.W. 2) who introduced them to the appellant. The appellant assisted them to make the necessary application to the Singapore Improvement Trust and sometime in June saw a European officer of the Singapore Improvement Trust in connection with the plan for the structural alterations. In due course the application and the plan were approved by the Singapore Improvement Trust.

Phua Hoon Sin then approached the appellant to assist him to get the partnership registered with the Singapore Improvement Trust. Appellant promised to

assist him to make the necessary application. Some days later the appellant informed Phua Hoon Sin that to get the partnership registered Phua Hoon Sin had to pay three European officers of the Singapore Improvement Trust — to the Chief the sum of $1,000 to the 2nd man $500 and to the 3rd man $500 and the appellant asked $1,000 for himself. Phua Hoon Sin asked him to reduce the amount and further said that he would consider the matter. A few days later he visited the appellant who asked him for $1,000 saying that one European officer was going on vacation and told him to bring the money on the 31st August, 1953. Phua Hoon Sin agreed to do so.

Phua Hoon Sin and Kwang Boon Pin then visited an Advocate and Solicitor, on the 29th August and on the 31st August he brought them to see an officer in the Corrupt Practices Investigations Bureau and later the same day Phua Hoon Sin made a report to the Police.

By arrangement Phua Hoon Sin on the same day brought $1,000 in $10 notes to A.S.P. Ng Leng Hock (P.W. 1) who took down the numbers of the notes. Phua Hoon Sin was then instructed by A.S.P. Ng Leng Hock to bring the $1,000 to the appellant's flat and to hand the money to the appellant if the appellant asked for it.

That same evening Phua Hoon Sin and Kwang Boon Pin went into the flat of the appellant while A.S.P. Ng Leng Hock and some Police Officers watched around the building.

The appellant asked Phua Hoon Sin if he had brought the money. Phua Hoon Sin handed over the $1,000 to the appellant and waited for 15 minutes before leaving the flat. Immediately after Phua Hoon Sin and Kwang Boon Pin left the flat the police raided the appellant's flat. A.S.P. Ng Leng Hock found the $1,000 on a writing table in appellant's bedroom. Appellant was then arrested.

The defence was a total denial that the $1,000 was handed by Phua Hoon Sin to the appellant. The appellant explained that the $1,000 found in his bedroom was handed to him that night by Seah Chin Kwang for safe keeping. Seah Chin Kwang giving evidence on behalf of the defence corroborated appellant's statement. Appellant however, admitted that he assisted Phua Hoon Sin with the plans for Structural alterations.

It was submitted by the counsel for the defence that the witnesses Phua Hoon Sin and Kwang Boon Pin were accomplices and the Court should not accept their evidence without corroboration. The learned District Judge did not agree with this contention and held that these two witnesses were not accomplices because they made themselves agents of the prosecution before the actual commission of the offence and he relied on the case of **Sathasivam & Ors. v. Public Prosecutor**(1).

The appellant was convicted and sentenced to six months rigorous imprisonment; and in addition a fine of $2,000 was imposed. From this conviction and sentence the appellant appealed.

Held, following **Reg. v. Mullin**(3): as Phua Hoon Sin and Kwang Boon Pin concurred fully in the criminal designs for a certain time, until getting alarmed or from some other cause, they turned upon their former associate and gave information against him, these two witnesses must be regarded as accomplices.

Held further, following **Davies v. Director of Public Prosecution**(5): (1) in a criminal trial when a person who is an accomplice gives evidence on behalf of the prosecution, it is the duty of the Judge to warn the jury that, although they may convict on his evidence, it is dangerous to do so unless it is corroborated; (2) this rule, although a rule of practice, now has the force of law; and (3) when the Judge fails to warn the Jury in accordance with this rule, the conviction will be quashed, even if in fact there be ample corroboration of the evidence of the accomplice unless the appellate Court can apply the proviso to section 6 (1) of the Criminal Appeal Ordinance, 1934.

[**Editorial Note**: In the case of **Lewis**(4) it was held that where the presiding Judge at the trial has omitted to give any direction to the jury as to the danger of convicting the accused person on the uncorroborated evidence of accomplices, the conviction may be allowed to stand if, but only if, there exists corroborative evidence of such a convincing, cogent and irresistible character that the jury, if they had received the proper direction, must have come to the same conclusion.]

Cases referred to:—

(1) *Sathasivam & Ors. v. Public Prosecutor* (1949) M.L.J. 102.

(2) *Emperor v. Chatterbhug Sahu* I.L.R. 38 Cal. 96.

(3) *Reg. v. Mullins* 3 Cox C.C. 526.

(4) *Lewis* 26 Cr. App. R. 110.

(5) *Davies v. Director of Public Prosecution* (1954) 2 W.L.R. 351; (1954) 1 All E.R. 507.

(6) *Moore* 28 Cr. App. R. 111.

(7) *R. v. Tate* (1908) 2 K.B. 680.

(8) *Baskerville* 12 Cr. App. R. 81.

MAGISTRATE'S APPEAL.

K. A. Seth (*C. H. Koh* with him) for the appellant.

H. B. Livingstone (Crown Counsel) for the respondent.

Cur. Adv. Vult.

Murray-Aynsley, C.J.: — The substantial point in this appeal deals with questions relating to the evidence of accomplices. Two of the prosecution witnesses were at one stage of the proceedings undoubedly accomplices if their evidence was true, that is to say, they were quite prepared to bribe the appellant, an employee of the Singapore Improvement Trust, to further their designs and negotiated with him on the matter. At a certain stage they informed the Police and thereafter, it is assumed, co-operated with them in the laying of a trap to catch the appellant. The trap succeeded and the appellant was arrested. The learned District Judge ruled that they were not accomplices. This decision was based on a Johore case *Sathasivam*(1). This is based in its turn on an Indian case reported in 38 Calcutta 96(2). At p. 105 Doss, J. said:—

> "If the witness has made himself an agent for the prosecution before associating himself with the wrong doers or before the actual perpetration of the offence, he is not an accomplice; but he may be an accomplice if he extends no aid to the prosecution until after the offence has been committed."

In fact the witness in that case was a police spy from the beginning, so the matter at present under consideration did not arise.

A similar view is found in *Taylor*, 12th Ed. para. 971. It has been the practice both in this country and in India to regard the law here and in India as being the same as the law of England in this matter. If that is so, the statement of the law found in the Calcutta

case seems to be inaccurate. The matter was decided in England in *Reg. v. Mullins*[3]. In that case there were four witnesses whose character was considered. Two were police spies from the start and undoubtedly not accomplices. One of the other two, Barrett, was originally a consiprator and only informed after arrests had been made. Baldwinson had been a conspirator but informed before arrests were made. Of these Maule, J. said :—

"Barrett and Baldwinson, on the other hand, were really Chartists, concurring fully in the criminal designs of the rest for a certain time, until getting alarmed, or from some other cause, they turned upon their former associates and gave information against them. These persons may be truly called accomplices."

This decision has never been questioned and I take it to lay down the law on the subject. It appears that on the strength of this the two witnesses must be regarded as accomplices.

It was formerly considered that when in point of fact there was corroboration the absence of a warning to the jury was immaterial. In strict logic this view was correct. But in recent years a conviction has been quashed by the Court of Criminal Appeal where there is corrobation (*Lewis*[4]); and in the recent case of *Davies v. Director of Public Prosecution*[5], approval is given to the proposition "where the Judge fails to warn the jury in accordance with this rule the conviction will be quashed, even if in fact there be ample corroboration of the evidence of the accomplice unless the appellate Court can apply the proviso to section 4(1) of the Criminal Appeal Act, 1907."

In the case of *Lewis*[4] the Court of Criminal Appeal ruled that the conviction can only stand if there exists corroborative evidence of such convincing, cogent and irresistible character that the jury, if they had received the proper warning, must have come to the same conclusion. This appears to have been approved by Lord Simonds in the case of *Davies*[5]. It should be noted that as far as I can see the case of *Lewis*[4] was the only one where the Court of Criminal Appeal quashed a conviction where there was in point of fact substantial corroboration. In a very long line of cases there was some hesitation as to whether it was a case for the proviso or whether corroboration was immaterial. The result was the same in either case. The case of *Lewis*[4] was not fully argued and none of the earlier cases was referred to. In the later case of *Moore*[6] the case of *Lewis*[4] was not referred to and leave to appeal was refused. The judgment of the Court said: "where there is substantial corroboration this Court will not interfere with the verdict of a jury because there has been in the summing up no specific warning about the danger of acting upon the uncorroborated testimony of an accomplice."

R. v. Tate[7] had been cited with approval in *Baskerville*[8] case and at that date no one had suggested that a warning had any great importance if there was in fact substantial corroboration.

Before the case of *Davies*[5] the case of *Lewis*[4] might have been regarded as an unexplained departure from the normal practice of the Court of Criminal Appeal. Actually there was quite enough evidence for a conviction without that of accomplices. The case of *Davies*[5] has now come as an important change in this matter and we are obliged to follow it. In the present case, as in others of this class, we must treat the misdirection of a District Judge of himself in the same way as an erroneous direction to a jury.

In the present case there is some other evidence against the appellant but it cannot be said that it comes up to the requirements of the case of *Lewis*[4].

The appeal must be allowed and the conviction quashed.

Conviction quashed.

Solicitors for the appellant: *C. H. Koh & Co.*